No. 12236

United States

Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

CHRYSLER CORPORATION PARTS WHOLESALERS, et al.,

Appellees.

Transcript of Record

Appeal from the United States District Court for the Western District of Washington, Northern Division

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF COUNSEL

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Tacoma, Washington

MESSRS. RANDALL & DANSKIN,
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Spokane, Washington

In the United States District Court, Western District of Washington, Northern Division

Criminal Action No. 47762

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHRYSLER CORPORATION PARTS WHOLESALERS, NORTHWEST REGION; MoPAR CLUB; S. L. SAVIDGE, INC.; AMERICAN AUTOMOBILE COMPANY; COMMERCIAL AUTOMOTIVE SERVICE, INC.; WINTHROP MOTOR COMPANY; RIEGEL BROTHERS, INC.; W. G. POWELL; JOHN MUNSTER; STANLEY SAYRES; RALPH W. HANSON; FRANK L. HAWKINS; CARL J. BRUSH; GEORGE W. MILLER; STANLEY PETERSON; DEE R. RIEGEL; T. H. NAISMITH,

Defendants.

INDICTMENT

The Grand Jury charges:

I.

The Defendants

1. The Chrysler Corporation Parts Wholesalers, Northwest Region, is hereby indicted and made a defendant herein. Said defendant is an unincorporated association of persons and concerns doing business in the states of Washington, Oregon or

Montana, who are authorized by the Chrysler Corporation to sell Chrysler replacement parts and engines both at wholesale and retail. Said association transacts business in the city of Seattle, Washington. Said association is sometimes hereinafter referred to as the "Wholesalers Association."

2. The MoPar Club is hereby indicted and made a defendant herein. Said defendant is an unincorporated association of persons and concerns doing business in the Puget Sound area of the state of Washington (including the cities of Everett, Seattle, Kirkland, Redmond, Bellevue, Renton, Kent, Auburn, Puyallup, Tacoma, and Bremerton, all in the state of Washington), who are authorized by the Chrysler Corporation to sell Chrysler replacement parts and engines at retail. Said association transacts business and keeps its records in the city of Seattle, Washington.

3. The corporations listed below are hereby indicted and made defendants herein. Each of said corporations is incorporated under the laws of the state of Washington and has its principal place of business in the city indicated below. Each will sometimes hereinafter be referred to by the abbreviated name indicated below:

Name of Corporation	Principal Place of Business	Abbreviated Name
S. L. Savidge, Inc.	Seattle, Washington	Savidge
American Automotive Company	Seattle, Washington	American
Commercial Automotive Service, Inc.	Seattle, Washington	Commercial
Winthrop Motor Company	Tacoma, Washington	Winthrop
Riegel Brothers, Inc.	Spokane, Washington	Riegel

The above-named defendants are hereinafter sometimes collectively referred to as the "corporate defendants."

4. The individuals listed below are hereby indicted and made defendants herein. Each is, and, during the period covered by this indictment, has been, associated with the corporate defendant indicated below. Each individual during the period covered by this indictment, which is wholly within the statute of limitations, has been actively engaged in the management, direction and control of the affairs, policies and acts of the corporate defendant with which he is associated, and the affairs, policies and acts of the Wholesalers Association and the MoPar Club, and in the said period has authorized, ordered or done the acts alleged herein to constitute the offense charged:

Name	Address	Company with Which Associated
W. G. Powell	Seattle, Washington	Savidge
John Munster	Seattle, Washington	Savidge
Stanley Sayers	Seattle, Washington	American
Ralph W. Hanson	Seattle, Washington	American
Frank L. Hawkins	Seattle, Washington	Commercial
Carl J. Brush	Seattle, Washington	Commercial
George W. Miller	Tacoma, Washington	Winthrop
Stanley Peterson	Tacoma, Washington	Winthrop
Dee R. Riegel	Spokane, Washington	Riegel
T. H. Naismith	Spokane, Washington	Riegel

5. Acts alleged in this indictment to have been done by a defendant corporation or association were authorized, ordered or done by its officers, directors, agents or employees, including the natural persons named as defendants herein.

III.

Nature of Trade and Commerce

6. The Chrysler Corporation, hereinafter referred to as "Chrysler," with its principal place of business in Detroit, Michigan, manufactures automobiles and trucks sold under the names Chrysler, DeSoto, Dodge and Plymouth. Chrysler manufactures replacement parts and engines to be used in the repair of said automobiles and trucks in plants located in the states of Michigan, Georgia, Kansas, Delaware and California. In excess of 25,000 different replacement parts are manufactured and sold by Chrysler. Chrysler divides said 25,000 replacement parts into two classes:

(a) Class A Parts—Items, such as piston rings and carburetors, which are competitive with similar interchangeable parts manufactured by companies other than Chrysler and sold by auto supply stores, garages, filling stations and other wholesale and retail outlets in competition with authorized Chrysler wholesalers and authorized Chrysler dealers.

(b) Class B Parts—Items, such as fenders, grills and bumpers which are manufactured and sold only by Chrysler and authorized Chrysler dealers and authorized Chrysler wholesalers.

7. Chrysler sells Chrysler replacement parts and engines to all persons and concerns, hereinafter referred to as "authorized Chrysler dealers," to whom it has granted a franchise to sell said automobiles and trucks, and to a limited number of said

persons and concerns, hereinafter referred to as "authorized Chrysler wholesalers," who, because of their geographical location, size and facilities for wholesale distribution of parts and engines, are granted franchises to act as wholesalers as well as retailers.

8. Authorized Chrysler wholesalers are not mere agents acting for Chrysler in the distribution of replacement parts and engines. By the terms of their franchise contracts with Chrysler, they are independent enterpreneurs engaged in the business of purchasing said parts and engines from Chrysler and reselling them as their own property. Said authorized Chrysler wholesalers sell said parts and engines to five classes of customers:

(a) Authorized Chrysler dealers;

(b) Owners of independent garages, repair shops, body rebuild shops and service stations who sell or install replacement parts or engines;

(c) Fleet customers, such as cab companies, truck lines and other concerns using a number of vehicles in connection with their business;

(d) Over-the-counter customers, not falling within any of the three previous categories, who purchase replacement parts or engines at retail; and

(e) Repair department customers who have replacement parts or engines installed in their vehicles in the course of repairs made by the service departments of corporate defendants.

9. Authorized Chrysler dealers are likewise independent enterpreneurs engaged in the business of purchasing and reselling Chrysler replacement parts and engines. They purchase substantially all of their requirements of said parts and engines from authorized Chrysler wholesalers, and resell said engines and parts to the classes of customers described in subparagraphs 8 (b), (c), (d), and (e) above, in competition with authorized Chrysler wholesalers doing business in the same area.

10. The corporate defendants are the authorized Chrysler wholesalers in the state of Washington. In anticipation of, and in response to, orders and demands from customers in the state of Washington of the classes described in paragraph 8 hereof, the corporate defendants regularly order, purchase and procure the shipment of Chrysler replacement parts and engines from the Chrysler plants located in the states listed in paragraph 6 hereof, and resell said parts and engines to said customers in the state of Washington. Said corporate defendants, and authorized Chrysler dealers in the state of Washington to whom they sell, serve as a conduit through which said Chrysler replacement parts and engines move in a regular, continuous and uninterrupted flow to the ultimate users of said parts and engines in the state of Washington.

11. More than 90 per cent of the Chrysler replacement parts and engines used in the state of Washington are sold therein by the corporate de-

fendants. The dollar value of the Chrysler replacement parts and engines sold in the state of Washington by the corporate defendants during the period covered by this indictment exceeded $9,000,000. The purchase and resale of Chrysler replacement parts and engines by the corporate defendants as the authorized Chrysler wholesalers for the state of Washington, and by the authorized Chrysler dealers to whom they sell, is an integral part of and incidental to the uninterrupted movement of said substantial volume of Chrysler replacement parts and engines in interstate commerce from the Chrysler plants located in the states listed in paragraph 6 hereof, to the ultimate users of said replacement parts and engines in the state of Washington.

IV.

The Conspiracy

12. Beginning in or about November 1946 and continuing thereafter to the date of the return of this indictment, the defendants herein named have engaged in an unlawful combination and conspiracy to fix, maintain and control prices and discounts applicable to the sale in the state of Washington of Chrysler replacement parts and engines produced in the states of Michigan, Georgia, Kansas, Delaware and California in unreasonable restraint of the interstate trade and commerce hereinbefore described and in violation of section 1 of the Act of Congress of July 2, 1890, entitled, "An Act to

Protect Trade and Commerce Against Unlawful Restraint and Monopoly" (25 Stat. 209, 15 U.S.C. 1), commonly known as the Sherman Act.

13. Said combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been:

(a) That the defendants raise, fix and agree upon the prices at which defendants sell Chrysler replacement parts and engines.

(b) That the defendants decrease, fix and agree upon discounts to be granted by defendants in the sale of Chrysler replacement parts and engines.

(c) That the defendants adhere to and maintain said agreed upon prices and discounts in the sale of Chrysler replacement parts and engines.

(d) That the defendants induce and compel authorized Chrysler dealers to whom they sell Chrysler replacement parts and engines to adhere to and maintain said agreed upon prices and discounts in the sale of said replacement parts and engines.

14. During the period of time covered by this indictment and for the purpose of forming and effectuating the said combination and conspiracy to unreasonably restrain the said interstate trade and commerce, the defendants, by agreement and concert of action, have done the things which, as hereinbefore alleged, they conspired to do, and more particularly have done, among others, the acts and things described in the paragraphs below.

15. On or about November 12, 1946, defendants agreed upon and made effective in western Washington a price increase on all Chrysler replacement parts and engines sold to all classes of customers set forth in paragraph 8 herein, except authorized Chrysler dealers, in the following amounts: an increase of 5 per cent in the price of all Class A Chrysler replacement parts, an increase of 15 per cent in the price of all Class B Chrysler replacement parts, and an increase of 5 per cent in the price of all Chrysler replacement engines. Defendants notified authorized Chrysler dealers to whom defendant corporations sold Chrysler replacement parts and engines of said agree-upon price increases, advised said dealers to increase their prices in like amounts, and furnished said dealers with computation tables prepared by defendants in order to insure adherence to and uniform computation of the increased prices.

16. In or about November 1947, defendants organized the defendant Wholesalers Association, in which each corporate defendant was, and is, represented. Thereafter, and throughout the period covered by this indictment, defendants supported, maintained and utilized defendant Wholesalers Association as an instrumentality for fixing, maintaining and controlling prices and discounts applicable to the sale of Chrysler replacement parts and engines. Throughout said period defendant Wholesalers Association conducted periodic meetings at which information concerning prices and discounts

applicable to the sale of Chrysler replacement parts and engines was exchanged and discussed and agreements reached by defendants with respect to uniform price and discount policies on future sales of said parts and engines.

17. On or about January 8, 1948, defendants agreed upon and made effective in western Washington an additional increase of 10 per cent in the price of all Class B Chrysler replacement parts sold to all classes of customers set forth in paragraph 8 herein, except authorized Chrysler dealers. At the same time, defendants agreed upon and made effective a 5 per cent reduction in the discount allowed independent garages, repair shops, body rebuild shops, service stations and fleet customers in the purchase of Chrysler replacement engines. Defendants notified authorized Chrysler dealers to whom defendant corporations sold Chrysler replacement parts and engines of said agree-upon price increase and discount reduction, advised said dealers to change their prices and discounts in like amounts, and furnished said dealers with computation tables prepared by defendants with respect to said price increase and discount reduction in order to insure adherence to and uniform computation of the increased prices and reduced discounts.

18. On or about March 1, 1948, defendants made effective in eastern Washington a price increase on all Chrysler engines and parts sold to all classes of customers set forth in paragraph 8 herein, except

authorized Chrysler dealers, in the following amounts: an increase of 5 per cent in the price of all Class A Chrysler replacement parts, an increase of 10 per cent in the price of all Chrysler Class B replacement parts, and an increase of 5 per cent in the price of all Chrysler replacement engines.

19. On or about March 19, 1948, the defendants organized the defendant MoPar Club, in which each corporate defendant, other than Riegel, was, and is, represented. Thereafter, and throughout the period covered by this indictment, defendants supported, maintained and utilized defendant MoPar Club as an instrumentality for fixing, maintaining and controlling prices and discounts applicable to the sale of Chrysler replacement parts and engines, and particularly as a means through which to induce and compel adherence by authorized Chrysler dealers to the prices and discounts agreed upon by defendants as aforesaid. Throughout said period defendant MoPar Club conducted monthly meetings, attended by representatives of the defendant corporations (other than Riegel) at which information concerning prices and discounts applicable to the sale of Chrysler replacement parts and engines was exchanged and discussed, agreements reached with respect to uniform price and discount policies on future sales of said parts and engines, and uniform price lists and computation tables distributed.

20. On or about July 19, 1948, defendants made effective, throughout the state of Washington, an

additional 5 per cent increase on all Chrysler replacement engines sold to all classes of customers set forth in paragraph 8 herein, except authorized Chrysler dealers. Defendants notified authorized Chrysler dealers to whom defendant corporations sold Chrysler replacement engines of said agreed-upon price increase, advised said dealers to increase their engine prices in like amounts, and furnished said dealers with price lists prepared by defendants which set forth said price increase in order to insure adherence to and uniform computation of the increased prices.

V.

Effects of the Combination and Conspiracy

21. The purpose, intent and necessary effect of the aforesaid combination and conspiracy has been and is:

(a) To eliminate all price competition among defendants and the authorized Chrysler dealers to whom they sell, in the sale of Chrysler replacement parts and engines shipped in interstate commerce into the state of Washington and sold and distributed therein, and to deny the consuming public in the state of Washington the benefits of such competition.

(b) To raise, fix and maintain the prices at which Chrysler replacement parts and engines shipped into the state of Washington in interstate commerce are sold in the state of Washington, and

particularly: to increase the prices of Class A Chrysler replacement parts by 5 per cent, and the gross profit margin of defendants on said pairts from 66 per cent to in excess of 74 per cent; to increase the price of Class B Chrysler replacement parts by 25 per cent in western Washington and 10 per cent in eastern Washington, and the gross profit margin of defendants on said parts from 50 per cent to in excess of 87 per cent in western Washington, and from 50 per cent to 65 per cent in eastern Washington; to increase the price of Chrysler replacement engines by 10 per cent, and reduce the discount allowed independent garages, repair shops, service stations, and fleet customers in the purchase of said engines in western Washington by 5 per cent, and to increase the gross profit margin of defendants on said engines from 25 per cent to an average of approximately 40 per cent. Said increase in prices and reduction of discounts have increased the cost of replacement parts and engines to the purchasers thereof in excess of $1,000,000 during the period covered by this indictment.

(c) To directly, substantially, and unreasonably burden and restrain the flow in interstate trade and commerce of Chrysler replacement parts and engines from the states of Michigan, Georgia, Kansas, Delaware and California to the state of Washington, by means of the aforesaid elimination of price competition, and the aforesaid enhancement, fixing and maintenance of prices.

VI.

Jurisdiction and Venue

22. The combination and conspiracy hereinabove alleged has been formed in part and carried out in part within the Northern Division of the Western District of Washington in that, among other things: Defendants have held meetings in Seattle, Washington, at which defendants have agreed upon uniform prices and discounts; defendants have prepared in Seattle, Washington, uniform price lists and computation tables which have been distributed to and used by defendants, and the authorized Chrysler dealers to whom they sell, in order to insure adherence to and uniform computation of said agreed-upon prices and discounts; defendants, and the authorized Chrysler dealers to whom they sell, have sold in the Seattle area Chrysler replacement parts and engines having a total dollar value in excess of $5,000,000, at prices fixed pursuant to and in effectuation of the conspiracy.

A true bill:

/s/ THOMAS H. OLIN,
Foreman,

/s/ JAMES R. BROWNING,
Special Assistant to the
Attorney General,

/s/ AUTE L. CARR,

/s/ JOHN P. KELLY,
Attorneys,

/s/ HERBERT A. BERGSON,
Assistant Attorney General,

/s/ GEO. B. HADDOCK,
Special Assistant to the
Attorney General,
/s/ J. CHARLES DENNIS,
U. S. Attorney.

[Endorsed]: Filed Dec. 30, 1948.

[Title of District Court and Cause.]

DEFENDANTS' MOTION TO DISMISS

Come now the Defendants, Riegel Brothers, Inc., Dee R. Riegel, and T. H. Naismith, and move that the Indictment filed in this cause on the 4th day of January, 1949, be dismissed on the following grounds:

(1) Said Indictment does not allege any facts or charge the commission of any acts by these Defendants or either of them constituting an offense against the United States of America or the laws thereof, particularly Section 1 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act (Title XV, U.S.C.A. Section 1).

(2) The Indictment does not allege facts sufficient to establish that these Defendants, or each or any of the defendants, have entered into any contract, agreement, combination, or conspiracy in restraint of trade or commerce among the several states or with foreign nations, in violation of Section 1 of the Act of Congress of July 2, 1890, as

amended, commonly known as the Sherman Act (Title XV, U.S.C.A. Section 1).

(3) That the allegations of the Indictment are so vague, indefinite and uncertain that they do not inform these Defendants of the nature or cause of the accusations attempted to be stated against them as required by the fifth and sixth amendments to the Constitution of the United States.

(4) The allegations of the Indictment do not state with reasonable sufficiency or clarity the particular act or acts complained of as constituting the elements of the offense sought to be charged therein as to enable these Defendants to prepare a defense thereto, and therefore said Indictment, because of its vague, indefinite and uncertain allegations, does not sufficiently inform these Defendants of the nature or cause of the accusations made against them as required by the fifth and sixth amendments to the Constitution of the United States.

Dated this 5th day of February, 1949.

/s/ C. D. RANDALL,
of Randall & Danskin,
Attorneys for Defendants.

[Endorsed]: Filed Feb. 7, 1949.

[Title of District Court and Cause.]

Seattle, Washington,
February 28, 1949.

Before Honorable Sam M. Driver, United States District Judge.

ARGUMENT BY MR. TRACY GRIFFIN ON BEHALF OF THE DEFENDANTS

Mr. Griffin: If the Court please, all I know about an indictment is what the indictment says, and counsel for the defendants conferred in this matter, naturally, and there was some question as to whether this motion should be made at this time, all being of the opinion that the indictment does not state a cause of action, or whether as a matter of tactics it should await the hearing of the matter and ascertain if the trial court would exclude all evidence and limit it to the very limited charges of the indictment. On reading it, I at least was of the opinion that the government had deliberately drawn this indictment to ask this Court, or whoever might have it, to take one farther step in the matter of determining interstate commerce, because I conceived in reading it and re-reading it that it had been very carefully drawn. Time after time there was the language that this was all within the State of Washington, which at one time some years ago when there were state's rights, one would not have to read it two or three times, but realize immediately that there was no interference with the original conception of interstate commerce.

We all concluded that whether the indictment was so drawn or not to require this additional step, that it did not state a cause of action. It was our duty to present the matter now and dispose of it, and if the government was using this as a test, then they could proceed to have a higher court determine if the District Court should sustain the challenge, and the law would be settled without the necessity of a long extended trial. Counsel's argument leads me to the conclusion that the government must have that in mind, because, if I understood counsel for the government, he said, "It is the government's position that anything manufactured or produced without a state and brought into the state is in interstate commerce until it reaches the ultimate consumer". In other words, if that is the government's position, they're certainly asking your Honor to take a long, long step that the courts under a pleading of this kind have never as yet taken. I take it under their theory, if the Bon Marche and Frederick & Nelson and McDougal, Southwick & Rhodes determined to fix the price of safety pins by agreement, and that that is illegal, yet until those pins, one year, or five, or ten years from now, produced without the state, brought into their warehouses here, sold at retail, until they reached the ultimate consumer, under the government's theory they are all that period of time in interstate commerce, notwithstanding that they have been warehoused here and taxed here, because they've been out of interstate commerce under all the decisions. I can assume one other argument—safety pins may not

have been a good example, because I assume the government there used the "will hold" clause.

Now, with reference to paragraph 10, I'd like to read it to you, with regard to the allegations of the indictment: "That corporate defendants are the authorized Chrysler wholesalers in the State of Washington". Now, prior thereto they have alleged that these wholesalers are not agents of the Chrysler Corporation, but are independent entrepreneurs, organized and residing in the State of Washington, so what they say is that the corporate defendants, independent operators residing in the State of Washington, in anticipation of business that they expect to receive, and they say from customers in the State of Washington, order, purchase and procure, and by that they mean purchase these parts, and if you go to line 8, "and re-sell said parts and engines to said customers in the State of Washington".

That language to me there means and is plead definitely as intrastate business only, and the government having now taken the position, if I understood counsel correctly, and I believe I did, that their position is now that anything produced outside of the state and brought into the state remains in interstate commerce until it reaches the ultimate consumer, I suggest to you that that is a step that should not be taken, at least until the Supreme Court of the United States says that there are no state lines left.

RULING BY THE COURT ON DEFENDANTS' MOTIONS TO DISMISS

Judge Driver: Well, the Court isn't assuming one way or other that this is a test case. I don't know what the government's intentions may be. The grand jury has indicted the defendants, and the Court will pass on this indictment in the light of the law as I see it, without regard to whether or not it is a test case. I'm not going to attempt any comprehensive review of the arguments made here; the question has been fully presented, but I'm, on either phase of this argument, or this question, rather, unable to distinguish the activities outlined in this indictment from the activities of an ordinary wholesaler, or on the question of whether it affects—whether the activities affected interstate commerce, I'm unable to distinguish it from the ordinary intrastate price fixing arrangement, and I don't believe that the court, that the Supreme Court or any Court of Appeals so far as I have been able to determine have gone quite as far as this indictment goes. I can't believe, as I see it, despite what we all know has happened so far as extending the reach of the interstate commerce power of Congress in recent years, I don't believe the Courts have gone to the position where you can say that every price fixing arrangement, purely intrastate, affects the interstate commerce because of that circumstance alone, and I don't believe that any of the courts have gone so far as to hold that ordinary and usual and normal wholesalers' operations constitute activities in interstate commerce.

I really feel that because of the, at least the closeness of this question, that it should be passed upon by an appellate court before there is a jury trial. I think the Court would be in a better position to rule on questions of evidence and instruct the jury if I knew, if this indictment is to be upheld, on what theory it is upheld, and if it is upheld only as to those activities that represent specific orders for particular customers if that is alleged here, or whether the appellate court regards the whole operation as in interstate commerce or affecting interstate commerce.

I was impressed by Mr. Griffin's analysis of this paragraph 10. It seems to me that reading it in the light of other allegations in the indictment here, it does no more than simply allege that these defendants in the State of Washington as wholesalers were ordering, as an ordinary wholesaler does, in anticipation of orders and contracts, and in response to orders and contracts, and that they weren't ordering as agents of Chrysler, but they were buying and selling again, that that is a completed transaction; they bought the goods, and it was shipped in there; they would pass then, I think, from interstate to intrastate commerce, and the succeeding sale would be intrastate commerce.

Now, if I'm wrong, it won't be the first time, and no doubt not the last, but I'm going to grant the motions, and you may send the order to me, I presume, to Spokane, because it won't be complicated at all, and there isn't any bail up in this case, is there? Well, I'll sus-

tain the motions and direct that the action be dismissed.

United States of America,
Western District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Western District of Washington, for the cause of United States of America vs. Chrysler Corporation Parts Wholesalers, Northwest Region, et al, No. 47762. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, United States District Judge, held on February 28, 1949, at Seattle, Washington. That the above and foregoing contains a full, true and correct transcript of a portion of the argument and the court's ruling therein.

Dated this 1st day of March, 1949.

/s/ STANLEY D. TAYLOR,
Official Court Reporter.

[Endorsed]: Filed March 2, 1949.

[Title of District Court and Cause.]

ORDER DISMISSING INDICTMENT

This matter having come on for hearing before the undersigned Judge at 10:00 a.m., February 28, 1949, upon the Motions of the Defendants to dis-

miss the indictment herein, the United States of America, Plaintiff, being represented by its attorneys, Mr. Aute L. Carr and Mr. John P. Kelly, and the Defendants being represented by and through their counsel as follows: Defendants Chrysler Corporation Parts Wholesalers, Northwest Region and the Mopar Club by Ferguson, Burdell & Armstrong and Charles S. Burdell, which counsel appeared specially on behalf of said defendants and not otherwise; the Defendants S. L. Savidge, Inc., W. G. Powell and John Munster by Eggerman, Rosling & Williams and Edward Rosling; the Defendants American Automobile Company, Stanley Sayres and Ralph W. Hanson by Tracy Griffin and Kenneth Short; the Defendants Commercial Automotive Service, Inc., Frank L. Hawkins and Carl J. Brush by Bogle, Bogle & Gates, Robert W. Graham and J. Tyler Hull; the Defendants Winthrop Motor Company, George W. Miller and Stanley Peterson by Eisenhower, Hunter & Ramsdell and James V. Ramsdell; and the Defendants Reigel Brothers, Inc., Dee R. Reigel and T. H. Naismith by Randall & Danskin and Claude D. Randall; and the Court having considered the written briefs of counsel and having heard oral arguments, and the Court having heretofore announced its oral opinion at the conclusion of arguments on February 28, and being fully advised in the premises, it is therefore

Ordered, Adjudged and Decreed that the Defendants' Motions to dismiss the indictment herein

and all of them, be and the same are hereby granted, and it is

Further Ordered, Adjudged and Decreed that the indictment herein be and the same hereby is, dismissed.

Done in Open Court this 7th day of March, 1949.

/s/ SAM M. DRIVER,
Judge.

Presented by:

/s/ C. D. RANDALL,
One of Counsel for
Defendants.

Order approved as to form:

/s/ AUTE L. CARR,

/s/ JOHN P. KELLY.

[Endorsed]: Filed March 9, 1949.

[Title of District Court and Cause.]

CERTIFICATE

This will certify that the judgment of this Court entered on March 9, 1949, dismissing the indictment in the above-entitled case was based in part upon the insufficiency of the indictment as a pleading.

/s/ SAM M. DRIVER,
District Judge.

April 6th, 1949.

[Endorsed]: Filed April 6, 1949.

[Endorsed]: No. 12236. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Chrysler Corporation Parts Wholesalers, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed May 9, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

[Title of District Court and Cause.]

NOTICE OF APPEAL

The United States of America hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the judgment of the United States District Court for the Western District of Washington, entered on March 9, 1949, dismissing the indictment which charged a violation of Section 1 of the Act of Congress of July 2, 1890, entitled, "An Act to Protect Trade and Commerce Against Unlawful Restraint and Monopoly," (25 Stat. 209, 15 U.S.C. 1), commonly known as the Sherman Act. The judgment of the District Court dismissing the indictment is based in part upon the insufficiency of the indictment as a pleading to allege an offense within

the scope and meaning of the Sherman Act.

Dated April 6th, 1949.

/s/ CHARLES L. WHITTINGHILL,
Trial Attorney, Antitrust Div., Dept. of Justice,
Attorney for Plaintiff.

In the United States Court of Appeals
for the Ninth Circuit

No. 12236

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHRYSLER CORPORATION PARTS WHOLESALERS, NORTHWEST REGION, et al.,
Defendants.

DESIGNATION OF RECORD ON APPEAL

United States of America, appellant herein, designates the following portions of the record and proceedings in the above cause which are material to the consideration of the appeal.

1. The criminal indictment.

2. Motions of defendant to dismiss the indictment.

3. The opinion of the district court, dated March 1, 1949.

4. The order of the district court, dated March 7, 1949, and entered March 9, 1949, dismissing the indictment.

5. Certificate of the district court setting forth grounds for its judgment, signed April 6, 1949.

6. Notice of appeal, filed April 6, 1949.

7. Statement of points upon which appellant will rely.

8. This designation.

Dated May 19, 1949.

/s/ CHARLES S. WHITTINGHILL,
Trial Attorney, Antitrust Division, Department of Justice, Attorney for Appellant, United States of America.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL

The appellant intends to rely on the following points on appeal:

1. The district court erred in holding that the allegations of the indictment do not set forth a combination or conspiracy in restraint of interstate, as distinguished from intrastate, trade and commerce.

2. The district court erred in so far as it held that, under the allegations of the indictment, the defendant wholesalers are not engaged in interstate activity when they sell to customers within the State of Washington goods which the defend-

ant wholesalers have purchased and procured from outside the State of Washington in response to prior orders from such customers.

3. The district court erred in ignoring, or in failing to give effect to, the allegation of paragraph 10 of the indictment that the "corporate defendants, and authorized Chrysler dealers in the State of Washington to whom they sell, serve as a conduit through which said Chrysler replacement parts and engines move in a regular, continuous, and uninterrupted flow to the ultimate users of said parts and engines in the State of Washington."

4. The district court erred in so far as it held that, under all the allegations of the indictment, the purchase by the defendant wholesalers of Chrysler parts and engines from plants located outside the State of Washington and the sale by the said wholesalers of such parts and engines to purchasers within the State are separate, completed transactions so insulated from each other that defendants' combination and conspiracy to fix, maintain and control prices and discounts applicable to such sales does not burden and restrain the interstate purchase and procurement of said parts and engines.

5. The district court erred in ignoring, or in failing to give effect to, the allegations of paragraph 21 of the indictment that the purpose, intent and necessary effect of the combination and conspiracy charged in the indictment has been and is to directly, substantially and unreasonably bur-

den and restrain the flow in interstate commerce of Chrysler replacement parts and engines from states other than Washington to the State of Washington.

Dated May 19, 1949.

/s/ CHARLES L. WHITTINGHILL,
Trial Attorney, Antitrust Division, Department of Justice, Attorney for Plaintiff, United States of America.